

Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. (This is a GIL).

November 30, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated October 19, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am writing to you about a tax situation that has been raised for our station. We are a public television station owned by COMPANY in CITY, Illinois. We have an IRS status 501(c)(3) non-profit corporation. We are also sales tax exempt and I have enclosed a copy of both certificates for your information.

Our station leases tower space from BUSINESS for the purpose of broadcasting Channel ## to the residents of AREA.

Recently I received notice from BUSINESS that we are liable for an Illinois telecommunications Excise tax of 7.5% of the lease. At my request, BUSINESS sent me a copy of the tax code (also enclosed).

Upon reading the tax code, it appears that this tax is applicable to mobile phones and wireless communication systems. No where does it mention broadcasting.

Will you please advise me in writing of our obligation, if any, for payment of excise tax. Please contact me if you need further information.

The provision of television broadcasting services or satellite or cable broadcasting services, including basic network channels, premium channels, pay per view movies, etc., are not subject to the Telecommunications Excise Tax. Therefore your company's provision of broadcasting services does not make your company fall under the definition of telecommunications provider. Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate

of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

We do not understand what is involved in leasing "tower space" due to the limited information provided in your letter. Therefore we cannot answer your question. Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax. A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease.

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

We are also unclear from the limited information provided in your letter, whether Racom is providing you telecommunications services. Please note that the Telecommunications Excise Tax Act is a separate and distinct Act from the Retailers' Occupation Tax Act. The exemptions provided for in the Retailers' Occupation Tax Act are not incorporated by reference into the Telecommunications Excise Tax Act. Therefore, exemptions that are often available under the sales tax are not available from the Telecommunications Excise Tax.

Organizations that make application to the Department pursuant to provisions in the Retailers' Occupation Tax Act and are determined to be exclusively religious, educational, or charitable, and receive an exemption identification number (an "E" number) are exempt from Use Tax on purchases made in furtherance of their organizational purposes. However, they are not similarly exempt from paying Telecommunications Excise Tax. Therefore, your company would owe Telecommunications Excise Tax on the privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate for telecommunications purchased at retail from retailers. For example, charitable organizations exempt from Use Tax would owe tax on their phone bill.

Entities which are exempt from the Telecommunications Excise Tax include Federal and State governments, State Universities created by statute, as well as sales between a parent corporation and its wholly owned subsidiary or between wholly owned subsidiaries for use or consumption (and not for resale). However, such entities are not generally exempt from the obligation to collect and remit tax on sales of Telecommunications to others when they act as retailers of such telecommunications.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers. Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c).) These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. See 35 ILCS 635/25(c). Section 20 provides, in part, as follows:

"The amount of the municipal infrastructure maintenance fee imposed upon a telecommunications retailer under this Section shall not exceed: (i) in a municipality with a population of more than 500,000, 2.0% of all gross charges charged by the telecommunications retailer to service addresses in the municipality for telecommunications originating or received in the municipality; and (ii) in a municipality with a population of 500,000 or less, 1.0% of all gross charges charged by the telecommunications retailer to service addresses in the municipality for telecommunications originating or received in the municipality. If imposed, the municipal telecommunications infrastructure fee must be in 1/4% increments."

Please contact the individual municipalities to find out if they impose the municipal infrastructure maintenance fee and the applicable rate.

Illinois municipalities are also authorized to impose a municipal telecommunications tax. (See 65 ILCS 5/8-11-17.) The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate

not to exceed 5% of the gross charges for such telecommunications purchased at retail by such person. (See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2).) This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 (65 ILCS 5/8-11-2) of the Illinois Municipal Code. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it. There is no equivalent statute for county governments.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.